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EXAMINER

SALL, EL HADJI MALICK

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRAIN A. BATKE, SCOT A. TUTKOVICS,
GARY W. BACZKOWSKI, KENWOOD H. HALL
and DAVID A. VASKO

Appeal 2009-006123
Application 09/967,307
Technology Center 2400

Before JOSEPH F. RUGGIERO, ST. JOHN COURTENAY III,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

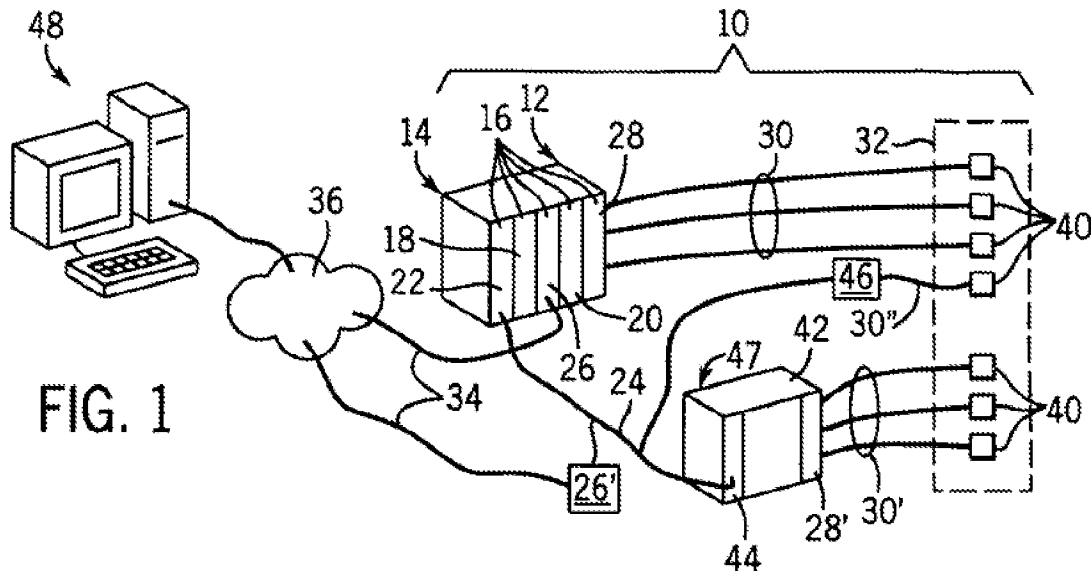
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

INVENTION

Appellants' Figure 1 is reproduced below:



Appellants' Figure 1 and claimed invention are directed to an industrial control system (10) having a programmable logic controller (18) communicating over a controller network (24) with a plurality of I/O modules (28) the latter communicating with an industrial process (32) sending and receiving electrical signals to and from the industrial process. *See Fig. 1 and Spec. [0031]-[0035]*. The Web interface module (26) may pass data from the Web 36 directly to the I/O modules (28) to produce

output signals sent to the industrial process without the intervention of the programmable logic controller (18). *See Spec.[0036]-[0038]; [0042].*

Claim 1, reproduced below, is representative of the subject matter on appeal (emphasis added):

1. A Web interface module for an industrial control system including a programmable logic controller for executing an industrial control program, the programmable logic controller communicating over a controller network with I/O modules, the I/O modules sending and receiving electrical signals to and from an industrial process, the Web interface module comprising;

an Internet interface for connecting to a Web accessing communications medium;

a network interface for connecting to the controller network; and

a processing unit executing a stored program to communicate directly with at least one I/O module and to pass data between the Web accessing communications medium and the I/O module, the passing of data including the writing of data to the I/O modules defining the electrical signals to be sent by the I/O module to the industrial process and the reading of data from the I/O modules defined by electrical signals received by the I/O modules from the industrial process;

whereby communications may be had with the I/O module without intervention of the programmable logic controller.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Papadopoulos '603	US 6,061,603	May 9, 2000
Papadopoulos '061	US 6,484,061	Nov. 19, 2002

Brown	US 6,542,925 B2	Apr. 1, 2003
Lindner	US 6,640,140 B1	Oct. 28, 2003
Hauet	US 6,799,077 B1	Sep. 28, 2004
Katsuhiko	JP 10-011325	Jan. 16, 1998

The following rejections are before us for review:

1. The Examiner rejected claims 1, 4, 12, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061.
2. The Examiner rejected claims 7-8 and 18-19 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061² and further in view of Papadopoulos '603.
3. The Examiner rejected claims 2 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061 and further in view of Katsuhiko.
4. The Examiner rejected claims 5 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061 and further in view of Brown.
5. The Examiner rejected claims 5 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061 and further in view of Brown.
6. The Examiner rejected claims 6, 9-11, 17, and 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Lindner in view of Papadopoulos '061 and further in view of Brown and Papadopoulos '603.

² We note that while the Examiner does not list Papadopoulos '061 in the rejection statements enumerated as 2-6 above, since the independent claims 1, 12, and 14 were rejected as unpatentable over Lindner in view of Papadopoulos '061, then the dependent claims were also rejected under these two references.

ISSUE

The pivotal issue is whether the combination of Lindner in view of Papadopoulos '061 teaches or suggests the limitation of “whereby communications may be had with the I/O module without intervention of the programmable logic controller” as recited in claim 1.

FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence:

1. Papadopoulos '603 (col. 4, ll. 39-53) teaches that the web server 30 provides a direct connection for a programmable logic controller (PLC) 32 to the Internet 14 by plugging the web server 30 into its backplane 34.
2. Papadopoulos '603 also teaches that the PLC is associated with I/O devices 40 (col. 4, ll. 54-55; and also see Fig. 2).

ANALYSIS

Appellants argue (App. Br. 10), that contrary to the Examiner's reasoning (Ans. 17-18), Papadopoulos (col. 4, ll. 39-53) does not teach communication of the Web server with the I/O module without intervention of the programmable logic controller.

We are persuaded by Appellants' arguments. Papadopoulos (FF 1) teaches that the *web server 30 provides a direct connection for a programmable logic controller (PLC) 32 to the Internet 14* by plugging the web server 30 into its backplane 34. Papadopoulos also teaches that the

PLC is associated with I/O devices 40 (FF 2). Thus, Papadopoulos teaches a PLC that is intervening between the Web server and the I/O devices.

The Examiner's position (Ans. 17-18) is that because the web server 30 is plugged into the PLC's backplane there is no intermediate device between the web server and I/O devices. The Examiner asserts (Ans. 17-18) that this means that there is direct connection/communication between the web server and the I/O devices *without PLC intervention*. On the record before us, we find such reasoning speculative at best. We decline to engage in speculation. Without an affirmative teaching or suggestion of the disputed claimed negative limitation in the cited references, we find the weight of the evidence supports the Appellants' position.

Accordingly, we will reverse the Examiner's rejection of claim 1. For similar reasons we will also reverse the Examiner's rejection of claims 2-22 as the additional cited references of Papadopoulos '603, Katsuhiko, and Brown either alone or in combination do not cure the above cited deficiency.

CONCLUSION

The combination of Lindner in view of Papadopoulos '061 does not teach or suggest the limitation of "whereby communications may be had with the I/O module without intervention of the programmable logic controller."

Appeal 2009-006123
Application 09/967,307

ORDER

The decision of the Examiner to reject claims 1-22 is reversed.

REVERSED

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